

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
October 24, 2006 Session

DAVID WAYNE HEARING v. STATE OF TENNESSEE

**Appeal from the Criminal Court for Greene County
No. 05CR406 James Edward Beckner, Judge**

No. E2006-00362-CCA-R3-PC - Filed December 28, 2006

The petitioner, David Wayne Hearing, pled guilty to two counts of first degree felony murder and received concurrent life sentences. He later filed a motion to withdraw his guilty pleas pursuant to Tennessee Rule of Criminal Procedure 32(f). The trial court ordered the petitioner's motion to be treated as a petition for post-conviction relief, and the petitioner filed an amended petition contending that his guilty pleas were involuntary and unknowing and that he received the ineffective assistance of counsel. The trial court denied the petitioner post-conviction relief. On review, we conclude that the trial court erred in construing the petitioner's motion to withdraw his guilty pleas as a petition for post-conviction relief. As a result, we reverse the judgment of the trial court and remand for consideration of the petitioner's motion to withdraw his guilty pleas.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Reversed

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and JOHN EVERETT WILLIAMS, JJ., joined.

M. Brent Hensley, Greeneville, Tennessee, for the appellant, David Wayne Hearing.

Robert E. Cooper, Jr., Attorney General and Reporter; Cameron L. Hyder, Assistant Attorney General; C. Berkeley Bell, Jr., District Attorney General; Connie Trobaugh and John Douglas Godbee, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

The petitioner was one of a group of people charged with murdering a couple during the commission of aggravated burglary. The state gave notice of its intention to seek the death penalty against the petitioner, and the trial court appointed two attorneys to represent the petitioner. On September 2, 2005, the petitioner entered into a plea agreement by which he pled guilty to two counts of felony murder and was sentenced to concurrent life sentences. On September 30, 2005, the petitioner filed a pro se motion to withdraw his guilty pleas. He alleged that his appointed counsel coerced him into accepting the plea agreement, that false promises were made to him

regarding the length of service of his sentences, that he had a “detrimental conflict of interest” with his counsel, and that he generally did not receive the effective assistance of counsel.

For reasons unstated, the trial court ordered on October 10, 2005, that the petitioner’s motion “must be treated as a petition for post conviction relief.” The trial court appointed counsel to represent the petitioner, and the petitioner filed an amended petition for post-conviction relief contending that his guilty pleas were unknowing and involuntary and that he received the ineffective assistance of counsel. The trial court conducted a post-conviction hearing, during which the petitioner’s two trial attorneys and the petitioner testified. After the conclusion of the hearing, the trial court filed its memorandum opinion, in which it found that the petitioner’s trial counsel were effective and that the pleas were made voluntarily. Accordingly, the trial court denied the post-conviction petition. The petitioner appeals this denial.

In this appeal, neither the petitioner nor that state challenges the trial court’s order to treat the petitioner’s motion to withdraw guilty pleas as a petition for post-conviction relief. However, we conclude that the trial court erred in this regard and that the case should be remanded to the trial court for consideration of the petitioner’s original motion to withdraw his guilty pleas.

Tennessee Rule of Criminal Procedure 32(f) permits a defendant to withdraw a guilty plea under certain circumstances. If a sentence has yet to be imposed, the trial court may grant a motion to withdraw “for any fair and just reason.” Tenn. R. Crim. Pro. 32(f)(1). If the defendant has been sentenced, a trial court may still grant a motion to withdraw a guilty plea before the judgment becomes final but only “to correct manifest injustice.” Tenn. R. Crim. Pro. 32(f)(2). Our supreme court has held that “a judgment of conviction entered upon a guilty plea becomes final thirty days after acceptance of the plea agreement and imposition of the sentence.” State v. Green, 106 S.W.3d 646, 650 (Tenn. 2003).

In the present case, the trial court did not offer any explanation on the record as to why it decided that the petitioner’s motion must be treated as a petition for post-conviction relief. There is no challenge to the timeliness of the petitioner’s motion. The petitioner’s guilty plea, which included his sentences, was entered on September 2, 2005. He filed his motion on September 30. Thus, the motion was timely and was authorized under Tennessee Rule of Criminal Procedure 32(f).

This court has previously held that when a motion to withdraw a guilty plea is erroneously treated as a petition for post-conviction relief, the trial court’s denial of post-conviction relief must be reversed to allow the petitioner to proceed on his Rule 32 motion. John Lewis Adams v. State, No. E2001-02765-CCA-R3-PC, Hamilton County, slip op. at 3 (Tenn. Crim. App. May 27, 2003). We explained that “the required showing by the petitioner to the post-conviction court differed, depending on whether the request was treated as a Rule 32(f) motion to withdraw his pleas or as a post-conviction petition.” Id. To succeed on a motion to withdraw a guilty plea, one has to prove the existence of a “manifest injustice” that necessitates that the motion be granted. The petitioner in the present case has not had the opportunity to make that showing.

As in Adams, we acknowledge that the trial court conducted an evidentiary hearing on the petition for post-conviction relief which included evidence related to the petitioner's reasons for seeking to withdraw his guilty pleas. Therefore, our remand may not necessitate a second evidentiary hearing, although further hearing is not prohibited if justice so requires. However, our opinion does require that the trial court consider the evidence in light of the standards for proving that one is entitled to withdraw a guilty plea under Rule 32(f).

Based on the foregoing and the record as a whole, we reverse the judgment of the trial court denying post-conviction relief, and we remand for consideration of the petitioner's motion to withdraw his guilty pleas.

JOSEPH M. TIPTON, PRESIDING JUDGE